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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 CR 243 (SHS)

5 ARASH KETABCHI,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 August 2, 2018  
3:00 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
Southern District of New York

17 ROBERT B. SOBELMAN

Assistant United States Attorney

18 GARY G. BECKER, ESQ.

19 Attorney for Defendant

20 Also present:

Special Agent Evan Picariello, Dept. Homeland Security

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(In open court; case called)

THE DEPUTY CLERK: Counsel, please state your names for the record.

MR. SOBELMAN: Robert Sobelman for the United States. I am joined at counsel table by Special Agent Evan Picariello of Homeland Security Investigations.

Good afternoon, your Honor.

THE COURT: Good afternoon, gentlemen.

MR. BECKER: Good afternoon, your Honor. I am Gary Becker. With me here today is Arash Ketabchi, standing next to me.

THE COURT: Please be seated in the courtroom.

Do you have an application, Mr. Becker?

MR. BECKER: Yes, your Honor. My application is to permit Mr. Ketabchi to withdraw his previously entered plea of not guilty and to make a plea of guilty to Count One of the indictment.

THE COURT: Is the plea agreement that I have on my desk, and apparently executed, identical to the agreement that was sent to my chambers?

MR. SOBELMAN: Yes, your Honor.

THE COURT: Swear the defendant in, please.

THE DEPUTY CLERK: Please stand and raise your right hand.

(Defendant sworn)

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1 THE DEPUTY CLERK: Please state your full name and  
2 spell your name for the record.

3 JUROR: Arash Ketabchi. A-r-a-s-h. Last name is  
4 K-e-t-a-b-c-h-i.

5 THE COURT: Just a moment.

6 (Pause)

7 THE COURT: Mr. Ketabchi, do you understand, sir, that  
8 you are now under oath and if you answer any of my questions  
9 falsely, your false or untrue answers may later be used against  
10 you in another prosecution for perjury or for making a false  
11 statement?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: How old are you, sir?

14 THE DEFENDANT: 44.

15 THE COURT: How far did you get in school?

16 THE DEFENDANT: I graduated high school, 12th grade.

17 THE COURT: Are you able to read, write speak, and  
18 understand English?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Is English your native language, sir?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: When you did you start learning English?

23 THE DEFENDANT: I believe it was around five years  
24 old.

25 THE COURT: I take it you are fluent in reading,

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1 speaking and understanding English?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you want an interpreter here for any  
4 reason?

5 THE DEFENDANT: I don't, your Honor.

6 THE COURT: Are you now or have you recently been  
7 under the care of a doctor or a psychiatrist?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: What is that?

10 THE DEFENDANT: I see a psychiatrist and also a  
11 therapist.

12 THE COURT: For reasons related to this indictment  
13 against you?

14 THE DEFENDANT: No, prior to. I have been mental  
15 illness for years now.

16 THE COURT: Is there a diagnosis?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: What is that?

19 THE DEFENDANT: Bipolar, depression, and manic  
20 depression.

21 THE COURT: Thank you.

22 Have you ever been treated or hospitalized for any  
23 mental illness, or any type of addiction including drug or  
24 alcohol addiction. Exclude the treatment by therapists for the  
25 diagnoses you just talked about as long as they are not

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1 inpatient.

2 THE DEFENDANT: Yes, your Honor, multiple times I  
3 have.

4 THE COURT: For the diagnoses you have just told me  
5 about or others?

6 THE DEFENDANT: Others. I have been in psyche wards a  
7 couple times and I have had multiple inpatient drug and rehab  
8 facilities.

9 THE COURT: What drugs are you taking now -- drugs,  
10 medicines or pills are you taking now, sir?

11 THE DEFENDANT: I am taking prescription drugs. I am  
12 taking Topamax every morning with 50 milligrams. I am taking  
13 100 or 200 milligrams -- I can't remember -- of Lamictal. And  
14 5 milligrams of Zyprexa every evening. That's three total  
15 drugs.

16 THE COURT: Have you taken those three drugs in the  
17 past 24 hours?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Any others?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Have you had any alcoholic beverage in the  
22 last 24 hours?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Do those drugs in any way affect your  
25 cognition, that is, your ability to think or to understand me

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1 or anyone else or to express yourself?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Is your mind clear right now?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Are you feeling all right?

6 THE DEFENDANT: I feel good. A little nervous, but  
7 you know.

8 THE COURT: That's understandable.

9 I take it you believe you have clarity of thought.  
10 That is my concern.

11 THE DEFENDANT: Yes, your Honor. I am fine with that.

12 THE COURT: Do you have an attorney here today?

13 THE DEFENDANT: Yes. To my right.

14 THE COURT: Who is that?

15 THE DEFENDANT: Mr. Becker.

16 THE COURT: Mr. Becker, do you have any doubt as to  
17 Mr. Ketabchi's competence to plead at this time especially  
18 given his comments about multiple inpatient treatment?

19 MR. BECKER: No, your Honor.

20 THE COURT: Mr. Ketabchi, you've heard Mr. Becker tell  
21 me that you wanted to enter a plea of guilty to Count One of  
22 the information against you. Is that true? Do you wish to  
23 plead guilty?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you had a full opportunity to discuss

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1 your case with Mr. Becker and to discuss the consequences of  
2 entering a plea of guilty?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you satisfied with Mr. Becker and his  
5 representation of you?

6 THE DEFENDANT: Very satisfied.

7 THE COURT: On the basis of Mr. Ketabchi's responses  
8 to my questions and my observations of his demeanor as he  
9 stands here before me today and on prior occasions in this  
10 litigation, I make the finding that he is fully competent to  
11 enter an informed plea at this time.

12 Before I accept a plea from you, sir, I am going to  
13 ask you certain questions. My questions are intended to  
14 satisfy me that you wish to plead guilty because you are in  
15 fact guilty of the crime to which you want to enter a plea of  
16 guilty and that you fully understand the consequences of  
17 entering a plea of guilty. I am going to be describing to you  
18 certain rights you have under the Constitution and laws of the  
19 United States.

20 You are going to be giving up those rights, every one  
21 of them, if you enter a plea of guilty today. I want you to  
22 listen to me carefully and if you don't understand anything I  
23 am saying to you or anything I am asking you, I want you to  
24 stop me. You can ask me anything you want. You can ask Mr.  
25 Becker anything you want. My concern is to make certain that

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1 you understand what I am asking you and that you understand  
2 what I am saying to you.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Under the Constitution and laws of the  
6 United States, Mr. Ketabchi, you have a right to speedy and  
7 public trial by a jury on the charges against you, which are  
8 contained in Indictment 17 CR 243.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If there were a trial, you would presumed  
12 innocent and the government would be required to prove you  
13 guilty by competent evidence and beyond a reasonable doubt.  
14 You would not have to prove you were innocent at trial.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If there were a trial, a jury of composed  
18 of 12 people selected from this district would have to agree  
19 unanimously that you were guilty.

20 Do you understand those rights?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You also have a right to be represented by  
23 an attorney at a trial and at every other stage of the  
24 proceedings against you. And if you cannot afford an attorney,  
25 an attorney is going to be given to you at no charge to you.



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1 You will not have to pay for that attorney's services.

2 Do you understand those rights?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: If there were a trial, sir, you would have  
5 the right to see and hear all of the witnesses against you.  
6 You would have of the right to have your attorney cross-examine  
7 those witnesses. You also will have the right to have your  
8 attorney object to any of the government's evidence, and you  
9 would have the right to have your attorney offer evidence on  
10 your own behalf if you so desired, and you also would have the  
11 right to have subpoenas issued or other compulsory process used  
12 to compel witnesses to testify in your defense.

13 Do you understand all those rights?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: If there were a trial, you would have the  
16 right to testify if you wanted to but, Mr. Ketabchi, nobody  
17 could force you to testify if you did not want to testify. The  
18 decision of whether or not to testify would be entirely yours.

19 In addition, if you decided not to testify at your  
20 trial, the jury would be instructed that they could draw no  
21 inference or suggestion of guilt from the fact that you decided  
22 not to testify.

23 Do you understand all those rights, sir?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that by entering a plea

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1 of guilty today, you are giving up each and every one of your  
2 rights I described, you are waiving those rights, and you will  
3 have no trial?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that you have the  
6 ability to change your mind right now, Mr. Ketabchi, and you  
7 can refuse to enter this plea of guilty? You don't have to  
8 enter it if you do not want to for any reason. You can change  
9 your mind right now and decide you don't want to plead guilty.

10 Do you understand those rights?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have you received a copy of Indictment 17  
13 CR 243?

14 THE DEFENDANT: Yes, your Honor. It is here in front  
15 of me.

16 THE COURT: Did you read it?

17 THE DEFENDANT: I did.

18 THE COURT: Did you discuss it with Mr. Becker?

19 THE DEFENDANT: Yes.

20 THE COURT: You have the right to have me read that  
21 indictment to you in open court. Similarly, if you don't want  
22 me to read it, I won't.

23 What is your pleasure, sir?

24 THE DEFENDANT: I am okay. Mr. Becker went over it.  
25 I don't need you to read it.

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1 THE COURT: I accept that as a knowing and voluntarily  
2 waiver of the right to have the indictment read in open court.

3 Do you understand that you are charged in Count One  
4 with participating in a conspiracy to commit wire fraud in  
5 violation of 18, U.S.C, 1349?

6 THE DEFENDANT: Yes, your Honor.

7 MR. BECKER: Your Honor, I believe it is 1343.

8 THE COURT: All right. Let's see.

9 Government, what is the government's position?

10 MR. SOBELMAN: Your Honor, 1349 is the conspiracy  
11 statute. Your Honor is correct.

12 MR. BECKER: Your Honor, forgive me. I was referring  
13 to the substantive. Forgive me.

14 THE COURT: No, it's the conspiracy. Just to be  
15 certain, I am going to take a look.

16 MR. SOBELMAN: To clarify 1343 is the object of the  
17 conspiracy, which is referenced in the indictment.

18 MR. BECKER: Your Honor, I stand corrected.

19 THE COURT: That's all right.

20 Yes, 1349 is the conspiracy. Any person who attempts  
21 to conspire to commit any offense under this chapter, shall be  
22 subject to the same penalties as those prescribed in the  
23 offense, the commission of which was the object of the  
24 conspiracy. 1343 is the substantive crime of wire fraud.

25 So let me go back. Do you understand that Count One

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1 of Indictment 17 CR 243, sir, charges you with conspiring to  
2 commit wire fraud in violation of 18, United States Code,  
3 Section 1349?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that if you did not  
6 plead guilty, the government would have to prove each and every  
7 element of the charge in Count One beyond a reasonable doubt at  
8 a trial?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mr. Sobelman, please, inform Mr. Ketabchi  
11 of the elements of the charge?

12 MR. SOBELMAN: The charge has two elements: First,  
13 that two or more persons in some way or manner agreed to try to  
14 accomplish a common and unlawful plan to commit wire fraud;  
15 two, the defendant knew the unlawful purpose of the plan and  
16 willfully joined in it.

17 The substantive crime of wire fraud, which was the  
18 object of the conspiracy has three elements. First, that the  
19 defendant devised a scheme to defraud or to obtain money or  
20 property by materially false or fraudulent pretenses,  
21 representations, or promises or willfully participated in such  
22 a scheme with knowledge of its fraudulent nature; two, the  
23 defendant acted with intent to defraud; and three, in  
24 advancing, furthering or carrying out the scheme, the defendant  
25 transmitted any writing, signal or sound by means of a wire,

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1 radio or television communication in interstate commerce or  
2 caused the transmission of any writing, signal or sound of some  
3 kind by means of a wire, radio or television communication in  
4 interstate commerce.

5 THE COURT: Mr. Ketabchi, do you understand those are  
6 the elements the government would have it prove beyond a  
7 reasonable doubt before a jury could return a verdict of guilty  
8 against you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: In addition to what Mr. Sobelman  
11 mentioned, the government is required to prove that venue lies  
12 in the Southern District of New York, which is a fancy way of  
13 saying at least one act of the conspiracy took place in the  
14 Southern District of New York.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: The burden is on the government to prove  
18 at least one act in connection with the conspiracy took place  
19 in the Southern District of New York. It is not prove beyond a  
20 reasonable doubt. It is simply proof by a evidence.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that the maximum  
24 possible penalty of conspiring to commit wire fraud is 20  
25 years' imprisonment, three years' supervised release, a fine of

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1 the greatest of \$250,000 or twice the gross pecuniary gain  
2 derived from the offense or twice the gross pecuniary loss to  
3 individuals other than you resulting from the offense, plus a  
4 \$100 mandatory special assessment; do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Now, I mentioned that part of the maximum  
7 term was the term supervised release. Supervised release, sir,  
8 means you will be subject to monitoring by the Probation  
9 Department upon your release from prison. That monitoring will  
10 be under certain terms and conditions, which if you violate  
11 them could lead to your reimprisonment without a jury trial for  
12 all or part of the term of supervised release and even without  
13 credit for any time you may have already served on postrelease  
14 supervision.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I also have the authority to order  
18 restitution to anyone injured as a result of your criminal  
19 conduct.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you also understand if I accept your  
23 guilty plea, sir, and determine that you are guilty of  
24 conspiring to commit wire fraud that determination may deprive  
25 you of such valuable civil rights such as the right to vote,

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1 the right to hold public office, the right to serve on a jury,  
2 and the right to possess any kind of firearm?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Mr. Becker, is your client a United States  
5 citizen?

6 MR. BECKER: Yes, your Honor.

7 THE COURT: Mr. Ketabchi, under current law there are  
8 sentencing guidelines that judges have to apply to determine  
9 what a fair and reasonable sentence is for each defendant who  
10 comes before that judge.

11 Have you talked to Mr. Becker about the guidelines?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that I won't be able to  
14 determine what sentence is appropriate here until I first  
15 determine what the proper guideline range is; do you understand  
16 that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: To help me determine that, I am going to  
19 receive a report from the Probation Office. You'll have an  
20 opportunity to be interviewed by them. Mr. Becker will have  
21 the ability to be there. I want you to give them complete and  
22 accurate information because I am going to use that report in  
23 determining what your sentence is.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: You'll have an opportunity as will Mr.  
2 Becker and Mr. Sobelman to object to any findings of fact in  
3 that report. If there are any objections, I will adjudicate  
4 them.

5 I am going to use that report in determining what the  
6 appropriate guideline range is. Even after I determine what  
7 the appropriate guideline range is, I then have to determine  
8 whether a departure is available and should be employed by me.  
9 If I do that, then you can be sentenced on the basis of a  
10 departure from the guideline either above the guideline range  
11 or below the guideline range.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Even after I do that, I then under the  
15 current procedures set forth by the Supreme Court need to apply  
16 all of the factors in 18, United States Code, Section 3553(a)  
17 to determine what is an appropriate sentence here.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that if you are  
21 sentenced to prison, and at this point based on what I know of  
22 this trial, you will be sentenced to prison, but I will keep an  
23 open mind.

24 Parole has been abolished, sir, and you will not be  
25 released any earlier on parole. You will serve your term of



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1 sentence without being released earlier on parole.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that if Mr. Becker or  
5 Mr. Sobelman has told you anything different about what your  
6 sentence or estimated what it is likely to be or in fact told  
7 you what they think it is going to be or even if you yourself  
8 have a belief as to what your sentence is going to be,  
9 everybody could be wrong; do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: That because I am going to sentence you  
12 and I don't know what your sentence is going to be. I need to  
13 receive the information from the Probation Department. I need  
14 to listen to what Mr. Becker wants to submit to me. The  
15 victims have a right to submit information to me as well and  
16 the government has a right to submit information. I need all  
17 of that information before I can determine what I am going  
18 sentence you to.

19 If I do sentence you to something that you don't  
20 expect or that is different from what people have told you it  
21 is going to be, you still are going to be bound to your guilty  
22 plea, sir. You will not be allowed to withdraw it.

23 Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Now, I have a document here and it is

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1 dated July 27th. It is six pages with exhibits. It is  
2 addressed to Mr. Becker. It looks like it is signed by Mr.  
3 Sobelman on behalf of the government.

4 I am going ask my deputy to mark it as Court Exhibit  
5 1. I will ask her to show you the last page.

6 Is that your signature on the last page?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you read that agreement before you  
9 signed it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you discuss it with Mr. Becker?

12 Did you discuss the plea agreement with Mr. Becker?

13 THE DEFENDANT: Oh, yes, your Honor.

14 THE COURT: Did you understand it when you signed it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand it now?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Does this letter agreement -- I will refer  
19 to it as a letter agreement -- the plea agreement, Government  
20 Exhibit No. 1, constitute your complete and total understanding  
21 of the entire agreement between yourself and the government and  
22 your attorney?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Is everything about your plea and sentence  
25 contained in this agreement? In other words, are there any

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1 side deals I should know about?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anyone offered you any inducements or  
4 threatened you or forced you to plead guilty to enter into the  
5 plea agreement?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Do you understand, sir, that in this  
8 agreement you have agreed to waive your right to appeal the  
9 sentence and you have agreed to waive your right to  
10 collaterally attack the sentence if I sentence you to 87  
11 months' imprisonment or less?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that in this agreement  
14 you have agreed to the entry of the consent order of  
15 forfeiture?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that in this consent  
18 order of forfeiture, you've consented to a money judgment  
19 against you in the amount of \$1,059,803.84?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that you have also  
22 agreed in this plea agreement to make restitution in the amount  
23 of \$563,427.99?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you also understand you have agreed not

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1 to appeal any term of supervised release, that is, to the three  
2 years or less?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You've agreed not to appeal any fine that  
5 is less than or equal to \$250,000?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And that you have agreed not to appeal any  
8 forfeiture amount that is less than or equal to \$1,059,803.84?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: You've agreed not to appeal any forfeiture  
11 amount that is greater than or equal to that same sum?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You've agreed not to appeal any  
14 restitution amount that is less than or equal to \$563,427.99.

15 THE DEFENDANT: Yes, your Honor.

16 MR. BECKER: Your Honor, forgive me for jumping in. I  
17 may have misheard the Court; but I thought I heard the Court  
18 ask Mr. Ketabchi whether he agreed that he was waiving any  
19 right to appeal an order of forfeiture in excess of the  
20 \$1,059,083.84.

21 If I heard the Court correctly, I am not sure that is  
22 correct.

23 THE COURT: Just a moment.

24 I think I may have read the government's obligation.  
25 Let me correct that. Let's make sure. Thank you, sir. As I

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1 was saying it, it didn't ring true. So let me restate it.

2 You understand, sir, that you've agreed not to appeal  
3 any fine as long as I impose a fine on you that is \$250,000 or  
4 less?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And that you've agreed not to appeal any  
7 forfeiture that I impose on you, that is, the sum \$1,059,803.84  
8 or less?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: You've agreed not to appeal any  
11 restitution amount that I impose on you that is \$563,427.99 or  
12 less?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Becker, I think that clears it up.

15 MR. BECKER: Absolutely.

16 THE COURT: Government?

17 MR. SOBELMAN: Yes, your Honor. That's correct.

18 THE COURT: Do you understand also in this agreement  
19 that you are waiving your right to assert the statute of  
20 limitations as a defense to the indictment against you?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Mr. Becker, are you aware of any valid  
23 defense that would prevail at trial or know of any reason why  
24 Mr. Ketabchi should not be permitted to plead guilty?

25 MR. BECKER: No, your Honor.

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1 THE COURT: Sir, is there an adequate factual basis in  
2 your view to support your client's plea?

3 MR. BECKER: Yes, your Honor.

4 THE COURT: Mr. Sobelman, in the view of the  
5 government is there an adequate factual basis to support  
6 Mr. Ketabchi's plea?

7 MR. SOBELMAN: Yes, your Honor.

8 THE COURT: Mr. Ketabchi, tell me what you did that  
9 makes you guilty of conspiring to commit wire fraud?

10 THE DEFENDANT: Your Honor, during some of the time  
11 period charged in the indictment, I agreed with others to  
12 engage in conduct that was fraud on members of the public  
13 through telemarketing businesses.

14 In 2014 I went to work as a salesmen for a  
15 telemarketing company selling business development products and  
16 services. The company was owned by William Sinclair and Mike  
17 Finocchiaro and was called Olive Branch Marketing.

18 THE COURT: Speak louder.

19 Olive--

20 THE DEFENDANT: Olive Branch Marketing.

21 We offered for sale the setting up of limited  
22 liability companies, marketing website design, business plans,  
23 and other services to persons interested in operating a  
24 business from their home. The persons we called had in most  
25 cases previously bought similar services from other

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1 telemarketing companies.

2 To induce customers to buy our services, we led them  
3 to believe that once their new businesses were set up, they  
4 stood to generate substantial income with little effort on  
5 their part. Although the sales pitch often included words like  
6 "there is the potential for this income," we also crossed the  
7 line and falsely told the customers that their businesses would  
8 in fact generate this income.

9 Your Honor, I knew what I was doing was wrong and  
10 unlawful.

11 THE COURT: When you talk about 2014 and you refer to  
12 the time period in the indictment, were you doing this activity  
13 between 2013 and 2017, sir?

14 MR. BECKER: Your Honor, may I have one moment to  
15 consult with Mr. Ketabchi?

16 THE COURT: Yes.

17 (Pause)

18 THE DEFENDANT: Your Honor, I don't remember the exact  
19 time frame; but I know it is not limited to 2014. It expanded  
20 through other time frames as well.

21 THE COURT: When you were talking to me, you referred  
22 to lists that you purchased -- sorry. You did not refer to  
23 lists that you purchased.

24 You referred to the fact that the people you were  
25 calling had previously bought similar things; is that right?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: I take it you got those names from the  
3 lists that you purchased from other telemarketers?

4 THE DEFENDANT: The other companies had sold these  
5 client's products and then they would send the leads what we  
6 call in the industry onto us and then we would sell the clients  
7 other services or something similar as well.

8 THE COURT: You gave money in exchange for those  
9 leads; right?

10 THE DEFENDANT: Yes. Not direct money. It was called  
11 a rev share, revenue sharing. So if I sold the client, for  
12 example, \$10,000, they would get a percentage, 20 percent,  
13 30 percent whatever they --

14 THE COURT: In other words, they would share in the  
15 revenue that you obtained from sales?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is it correct that you targeted elderly  
18 people?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Was there a significant percentage of  
21 elderly people in the sales that you made?

22 Mr. Becker, if you want to talk to your client, you  
23 certainly have the right to do so.

24 Talk to him.

25 MR. BECKER: Thank you.



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1 THE DEFENDANT: Your Honor, we didn't know the age of  
2 the people and the ages spanned. I have spoken to people who  
3 were 21 years old, 40 years old, 50 years old. It was a range.  
4 Where there some elderly people, absolutely.

5 THE COURT: You are telling me you did not target in  
6 any way elderly people?

7 THE DEFENDANT: No, not at all. That wasn't -- that  
8 wasn't the business of our industry.

9 THE COURT: There was no potential for income; isn't  
10 that correct?

11 THE DEFENDANT: Sorry?

12 THE COURT: In the businesses that you said you were  
13 going to set up, there was no potential for income?

14 THE DEFENDANT: No, they didn't make any money.

15 THE COURT: They never could make any money. The  
16 businesses were not set up; is that correct?

17 THE DEFENDANT: We set up their businesses, sure.  
18 Everything I sold we had a third-party, which is actually a  
19 gentleman on the indictment as well.

20 THE COURT: Mr. Becker is saying don't talk about  
21 other people.

22 MR. BECKER: No, I am saying he is not on the  
23 indictment.

24 THE DEFENDANT: So the third-party company would  
25 fulfill every single item we sold.

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1 THE COURT: The fulfillment center?

2 THE DEFENDANT: Fulfillment center.

3 THE COURT: Go ahead.

4 THE DEFENDANT: If you spoke to any of the clients,  
5 every client that was sold an LLC got a tax ID number. If they  
6 were sold a business plan, they were sold a business plan. I  
7 have documentation and proof of everything I sold.

8 MR. BECKER: Your Honor, may a -- because the Court's  
9 questions are very probative and if I could share my  
10 understanding, which is not inconsistent --

11 THE COURT: Let me finish and then you can say  
12 anything you want.

13 MR. BECKER: Sure.

14 THE COURT: Are you aware of any income that was  
15 earned by any of the clients you signed up?

16 THE DEFENDANT: When you are selling product called  
17 Young Living, they did receive some checks from Young Living.  
18 It was -- I don't know how to explain what kind of program it  
19 was. It was a marketing program where if they would sign up  
20 somebody under them, so on and so forth, they would receive  
21 income. So we would set them up with a program that was a  
22 marketing program and there were some people that did receive  
23 actual small checks.

24 THE COURT: Do you have any sense of the percentage of  
25 the people who were victims of your fraud who received small

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1 checks?

2 THE DEFENDANT: I don't remember exactly, but that  
3 was -- that happened at Olive Branch Marketing on  
4 Mr. Sinclair's floor.

5 THE COURT: Could you estimate it as less than  
6 5 percent of the target of the victims of the fraud?

7 THE DEFENDANT: I don't remember exactly, your Honor.

8 THE COURT: Was it less than 10 percent?

9 Again, if you know. If you have a range.

10 THE DEFENDANT: I don't remember. I don't know.

11 THE COURT: If people wanted their money back from  
12 your program, what you were telling your people was to try to  
13 avoid giving them their money back; is that correct?

14 MR. BECKER: Your Honor, forgive me for jumping in --

15 THE COURT: I am trying to understand the contours of  
16 the fraud.

17 MR. BECKER: Okay. Let me share this with you and  
18 then if the Court has additional questions, we'll answer them.

19 My understanding is that customers who previously  
20 purchased similar products and whose names were included on the  
21 lead lists that these companies purchased were called up and  
22 the sales pitch essentially -- this is not in every case --  
23 was: Have you ever thought operating a business out of your  
24 home? It can be very lucrative. We can set up an LLC for you.  
25 We can design a website. We can give you a business plan and

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1 then you can market whatever products you want to market. For  
2 example, if you like dogs, you want to sell dog food, you can  
3 do that.

4 There is no question, and that is why Mr. Ketabchi is  
5 pleading guilty here today, that in inducing the customers to  
6 part with their money, fraud was committed because  
7 representations that were false were made about of the income  
8 that would be generated. In terms of other representations  
9 that were made that were false, the Court may recall an earlier  
10 proceeding I implored the Court to understand that the  
11 indictment did not contain a very complete list of what the  
12 false allegations were. And had this case gone forward, I  
13 would have sought a bill of particulars. But there is no  
14 question what Mr. Ketabchi told you when he read the allocution  
15 that they crossed the line and made false statements about it.

16 There is also no question, your Honor -- I think I  
17 asked the question you asked of Mr. Ketabchi -- there was  
18 certainly the potential to make money. You had an LLC. You  
19 could market products. There is no question the customers were  
20 misled. It was a large-scale fraud. Mr. Ketabchi fully  
21 accepts responsibility for his role in it.

22 In a way, I am glad the Court asked the question it  
23 asked, because it is important to understand exactly what the  
24 fraud was and what it wasn't.

25 THE COURT: That's what I am trying to get at.

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1           MR. BECKER: So, for example, someone -- the sales  
2 pitch is we'll set up an LLC for you and it will cost you X  
3 amount of money. The customer, as I understand it, paid that  
4 amount of money and an LLC was in fact set up. The customer in  
5 fact got a business plan and a website.

6           Now, it may have been, and I don't dispute this, and  
7 believe the government's position is it was a generic website,  
8 that they were essentially all the same or incredibly  
9 rudimentary and it was really kind of a farce. I believe that  
10 would be the government's position.

11           I think part of the fraud was, and Mr. Ketabchi  
12 alluded to this or actually referred to it, that customers were  
13 misled into believing that once this stuff was in place, they  
14 could sit back and put their legs up on the coffee table and  
15 the money would start rolling in. Businesses just don't work  
16 that way. That was the fraud, I suppose. Although, the  
17 government I don't think has expressly said that.

18           So that is my understanding of where the fraud was.  
19 My understand is that you are going to get a website, you are  
20 going to get an LLC, and it was implicit that you are going to  
21 make a lot of money or else why do this. In fact, as  
22 Mr. Ketabchi allocuted, they expressly did cross the line and  
23 tell customers that. That was false and that is what made this  
24 telemarketing scheme different from, I suppose, so many others  
25 where they couch their words more carefully and therefore not

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1 subject to criminal prosecution.

2 THE COURT: My last question went to a different  
3 aspect of this, that is, whether or not they made efforts to  
4 prevent people from obtaining their money back when they wanted  
5 their money back.

6 MR. BECKER: I would respectfully ask that the Court  
7 permit Mr. Ketabchi to not answer that at this point.

8 THE COURT: That's fine.

9 MR. BECKER: Only because it is not something that I  
10 feel I have discussed with him sufficiently in this context,  
11 and it can certainly be addressed I suppose at sentencing.

12 THE COURT: That's fine. Let's let it go at that,  
13 Mr. Ketabchi. Thank you.

14 Before I started asking you some questions, you were  
15 reading from a document. That is perfectly permissible and I  
16 would assume it is perfectly permissible and maybe even  
17 visible, I don't know, that Mr. Becker assisted you with that.  
18 All of that is fine. What I do need you to tell me is that  
19 everything you read is in fact true?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: I think you told me this, but I just want  
22 to ask and make sure it is on the record that when you did  
23 these acts that you told me about, you knew what you were doing  
24 was wrong and illegal; is that right?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Mr. Sobelman, what evidence does the  
2 government have against Mr. Ketabchi?

3 MR. SOBELMAN: Your Honor, if the case were to proceed  
4 to trial, the government's evidence would include, among other  
5 things, cooperator testimony including individuals that  
6 participated in the fraud of Mr. Ketabchi, including victim  
7 testimony, including individuals that Mr. Ketabchi personally  
8 defrauded by telephone calls with them. It would include email  
9 correspondence between Mr. Ketabchi and his coconspirators. It  
10 would include communications from electronic devices seized  
11 from Mr. Ketabchi and others. It would also include financial  
12 records showing victim money flowing to Mr. Ketabchi's himself  
13 and also the corporate entities that he established and others  
14 established in furtherance of the fraud.

15 THE COURT: Thank you.

16 Mr. Ketabchi, how do you now plead to the charge in  
17 Count One of this indictment, guilty or not guilty?

18 THE DEFENDANT: Guilty, your Honor.

19 THE COURT: Are you pleading guilty because you are  
20 guilty, sir?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you pleading guilty voluntarily and of  
23 your own free will?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Because you acknowledge you're guilty as

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1 charged, because I find you know your rights and are waiving  
2 them knowingly and voluntarily, because I find your plea is  
3 entered knowingly and voluntarily and supported by an  
4 independent basis in fact containing each of the essential  
5 elements of the offense, I accept your guilty plea to Count  
6 One, sir, and I determine you to be guilty of that count.

7 I am going to set the date for sentencing as  
8 November 8th of the at 2:30 p.m.

9 I take it, government, there is no motion in regard to  
10 bail?

11 MR. SOBELMAN: That's correct.

12 THE COURT: Mr. Ketabchi, I am going to continue you  
13 on bail on the same conditions that you have been released on  
14 previously. In other words, you have to follow all of the  
15 conditions of your release.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I will see you on November 8th or any  
19 adjourned date.

20 MR. BECKER: Your Honor, thank you. While I am here,  
21 would the following week be available for the Court,  
22 November 8th? I have something that I believe is going to  
23 require my presence out of town. I can change it if need be  
24 but if the Court --

25 THE COURT: Of course. Let's take a look.



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1 November 15th. I have a trial at that time so we'll  
2 make it 4:30 p.m.

3 MR. BECKER: Thank you, your Honor.

4 THE COURT: November 15 at 4:30 p.m.

5 Anything else, government?

6 MR. SOBELMAN: No, your Honor.

7 THE COURT: Defense?

8 MR. BECKER: No, your Honor.

9 THE COURT: Thank you all.

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